Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on Regulations Relating to Passenger Carriers, Ridesharing, and New Online-Enabled Transportation Services.	Rulemaking 12-12-011 (Filed December 20, 2012)

DECISION DENYING NOTICES OF INTENT TO CLAIM INTERVENOR COMPENSATION SUBMITTED BY THE UTILITY REFORM NETWORK, TRANSFORM, INC., AND CENTER FOR ACCESSIBLE TECHNOLOGY, AND INTERVENOR COMPENSATION CLAIM BY CENTER FOR ACCESSIBLE TECHNOLOGY

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1. Summary

The Commission denies the Notice of Intent to Claim Intervenor Compensation filed by The Utility Reform Network, TransForm, Inc., and the Center for Accessible Technology (CforAT), as well as the Intervenor Compensation Claim filed by the CforAT, on the grounds that neither the Intervenor Compensation Program, the Intervenor Compensation Program Fund (Fund), nor the principles of equity or fairness permit the Commission to award intervenor compensation in a quasi-legislative proceeding involving transportation utilities. The law is clear that the Intervenor Compensation Program, as well as the Fund, only applies to formal proceedings of the Commission involving electric, gas, water, and telephone utilities.

This proceeding remains open.

2. Background

2.1. The Order Instituting Rulemaking and Decision

On December 20, 2012, the Commission opened this Rulemaking on Regulations Relating to Passenger Carriers, Ridesharing, and New Online-Enabled Transportation Services (OIR) to consider whether to adopt rules to regulate the proliferation of vehicles that utilize new technologies to pick up and transport passengers. In *Decision Adopting Rules and Regulations to Protect Public Safety While Allowing New Entrants to the Transportation Industry*, (2013) Decision (D.) 13-09-045, we referred to this new mode of transportation service as Transportation Network Companies (TNC), and found that they were

charter-party carriers that, as such, were subject to the Commission's regulatory jurisdiction pursuant to Pub. Util. Code §§ 5351 *et seq*.

Of note in the OIR is the following statement concerning attempts to obtain intervenor compensation:

> Any party that expects to request intervenor compensation for its participation in this OIR shall file its notice of intent to claim intervenor compensation in accordance with Rule 17.1 of the Commission's Rules of Practice and Procedure within 30 days of the filing of reply comments or of the prehearing conference, whichever is later.[1]

On the surface, it appears that the above instruction suggested that this OIR was the type of proceeding in which the participants might be eligible for intervenor compensation if the procedural and substantive requirements were satisfied. As we will explain, however, the suggestion that intervenor compensation can be awarded in a formal Commission proceeding involving transportation utilities is contrary to governing law.

2.2. The Notices of Intent and Intervenor Compensation Claim

2.2.1. The Utility Reform Network (TURN)

On March 29, 2013, The Utility Reform Network (TURN) filed its Notice of Intent to Claim Intervenor Compensation (NOI).

2.2.2. Center for Accessible Technology (CforAT)

On March 18, 2013, Center for Accessible Technology (CforAT) filed a NOI. After the Commission issued D.13-09-045, CforAT filed an Intervenor

[1] OIR, ¶ 7, at 13.

Compensation Claim on October 2, 2013, requesting $67,445.65 for the claimed substantial contribution it made to the OIR's outcome in Phase I.

2.2.3. TransForm, Inc. (TransForm)

On March 18, 2013, TransForm filed an NOI. On October 22, 2013, TransForm filed an Amended NOI that corrected a typographical error.

2.3. The Responses

On April 15, 2013, SideCar Technologies, Inc., Side.CR, LLC (SideCar), Zimride, Inc., and Tickengo, Inc., filed a joint response to TURN's NOI, which they opposed on the ground that this is a transportation proceeding and, therefore, is not eligible for intervenor compensation under Pub. Util. Code § 1801.3(a).

On November 1, 2013, SideCar filed its response to CforAT's Request for Award of Intervenor Compensation, and relied on the reasons in the joint response in opposing CforAT's request.

On November 1, 2013, Uber Technologies, Inc. (Uber) filed a response to CforAT's Request and to TransForm's Amended NOI. Uber also relied on Pub. Util. Code § 1801.3 for its argument that intervenor compensation may only be awarded in proceedings involving electric, gas, water, and telephone utilities.

3. Rules for Statutory Interpretation

As this decision requires us to determine the meaning of a statute, we begin by setting forth the rules for statutory interpretation. Over the years, California courts have adopted a three-part test for ascertaining the meaning of a statute. "First, we must ascertain the intent of the Legislature by examining the language of the statute, giving their words 'their ordinary meaning.'" (*People v. Canty* (2004) 32 Cal.4th 1266, 1276.) This is known as the plain meaning rule or test. (*See Burden v. Snowden* (1992) 2 Cal.4th 556, 562.) In looking at the meaning

of a statute, we adhere to the maxim *expressio unius est exclusion alterus*—"the express inclusion of something in a statutory provision implies that other things are excluded, even if the exclusion is not express." (Decision (D.) 07-11-049, at 3, citing to *Dean v. Superior Court* (1998) 62 Cal. App.4th 638, 641; *see* also *People v. Nichols* (1970) 3 Cal.3d 150, 161; and *Southern California Gas Co. v. Public Utilities Commission* (1979) 24, Cal.3d 653, 659.) If a statute's "meaning is without ambiguity, doubt, or uncertainty, then the language controls." (*Halbert's Lumber, Inc. v. Lucky Stores, Inc.* (1992) 6 Cal.App.4th 1233, 1239.) Second, if the meaning of a statute is not clear, or is susceptible to more than one meaning, we must take the next step and refer to the legislative history. (*Halbert's*, *supra*, 6 Cal.App.4th, at 1239; and *Long Beach Police Officers Association v. City of Long Beach* (1988) 46 Cal.3d 736, 743.) It is the duty of the courts to accept "that intended by the framers of the legislation, so far as its intention can be ascertained." (*Sand v. Superior Court* (1983) 34 Cal.3d 567, 570.) Third, if the first two steps fail to reveal the plain meaning of the statute, then the words should be interpreted to make them workable and reasonable, practical, in accord with common sense and justice, and to avoid an absurd result. (*Halbert's, supra*, 6 Cal.App.4th, at 1240; *Regents of University of California v. Superior Court* (1970) 3 Cal.3d 529, 536-537; *People v. Hinojosa* (1980) 103 Cal.App.3d 57, 64; and *In re Eric J.* (1979) 25 Cal.3d 522, 537.)

4. Under the Plain Meaning Test, Intervenor Compensation may not be Awarded in a Transportation Proceeding

4.1. Pub. Util. Code § 1801.3(a) is Limited to Formal Commission Proceedings Involving Electric, Gas, Water, and Telephone Utilities

Pub. Util. Code § 1801.3(a) is explicit that it only applies to formal Commission proceedings involving four classes of regulated utilities: "electric,

gas, water, and telephone." This Commission has found previously that Pub. Util. Code § 1801.3(a) "is clear and not susceptible to dispute[.]" (Order Denying Rehearing of Decision 07-12-006 (2008) Decision (D.) 08-11-062.)

It is equally clear that the subject utility of this OIR is the transportation industry. In D.13-09-045, we found that the TNCs "are charter-party passenger carriers, and therefore we will exercise our existing jurisdiction pursuant to Article XII of the California Constitution and the Passenger Charter-party Carriers' Act, Pub. Util. Code §§ 5351 *et seq*." (COL # 6, at 71.) Without a doubt the subject of this OIR has been the regulation of the new mode of transportation facilitated by way of an online-enabled application or platform. It is worth noting that this Commission recognized previously in *Order Granting Limited Rehearing of Resolution SX-100 on Issues Involving California Environmental Quality Act (CEQA) and Due Process, and Denying Rehearing in all Other Respects* (2012) Decision (D.) 12-06-041, that Pub. Util. Code § 1801.3 (a) "does not include rail transit agencies." The fact that this OIR involves transportation vehicles as opposed to rail transit does not alter our conclusion that intervenor compensation may not be awarded in formal proceedings involving only transportation utilities.

4.2. Pub. Util. Code § 1801's Phrase "in any proceeding" does not justify finding that a Quasi-Legislative Transportation Rulemaking is Included in the Intervenor Compensation Program

Since the Legislature did not include transportation utilities in the specified utilities in the Intervenor Compensation Program, the Commission must conclude that the use of the phrase "in any proceeding" in Pub. Util. Code § 1801 was not meant to expand the scope of the designated categories in Pub. Util. Code § 1801.3(a). This was the conclusion we reached in D.08-11-061, wherein

we reasoned that to interpret Pub. Util. Code § 1801 otherwise would place Pub. Util. Code §§ 1801.3(a) and 1801 "in direct conflict with each other and would render meaningless the list of specific utilities provided in [§] 1801.3(a). A statutory interpretation that renders a related statutory provision nugatory must be avoided." (*Id.*, at 4, citing *People v. Shabazz* (2006) 38 Cal.4th 55, 67.)

4.3. Pub. Util. Code § 1801.3(b) and (d) cannot be read to Mean that a Quasi-Legislative Transportation Rulemaking is Included in the Intervenor Compensation Program

Pub. Util. Code § 1801.3(b) states:

> The provisions of this article shall be administered in a manner that encourages the effective and efficient participation of all groups that have a stake in the public regulation process.

Pub. Util. Code § 1801.3(d) states:

> Intervenors be compensated for making a substantial contribution to proceedings of the [C]ommission, as determined by the [C]ommission in its orders and decisions.

While these two subsections appear to provide broad legislative directive with the use of phrases like "all groups," "public regulation process," and "proceedings of the Commission," they can only apply to proceedings and utilities that the state included in the intervenor compensation program, *i.e.* formal proceedings involving electric, gas, water, and telephone utilities. Such a construction would be consistent with the principle that statutory components should be construed in a manner that is consonant with, as opposed to antagonistic with, the intent of the legislation. (*In re J.W.* (1992) 29 Cal.4th 200, 213; and *Bourquez v. Superior Court* (2007) 156 Cal. App.4th 1275, 1288.)

Consistent with its duty to adhere to the rules of statutory interpretation, the Commission has rejected previous efforts to broaden the applicability of the

Intervenor Compensation Program beyond the utilities listed in Pub. Util. Code § 1801.3(a). (*See e.g.* D.12-06-041 [rail transit]; *Order Modifying Decision 07-03-014 and Denying Rehearing of Decision as Modified* (2007) Decision (D.) 07-11-049 [Digital Infrastructure Video Competition Act of 2006]; and *In the Matter of the Regulation of Used Household Goods Transportation by Truck* (1999) Decision (D.) 99-06-030 [household goods carriers].)

4.4. The Intervenor Compensation Program Fund Was Not Intended to Compensate Participants in Quasi-Legislative Transportation Rulemaking Proceedings

In *Interim Opinion on Payment of Intervenor Compensation Awards*, (2000) Decision (D.) 00-01-020, this Commission established the Intervenor Compensation Program Fund (Fund) to pay awards in quasi-legislative rulemaking proceedings where no specific respondents are named. The Commission explained that the Fund will be paid "through fees collected on an annual basis from regulated energy, telecommunications, and water utilities under our Pub. Util. Code § 401 *et seq.* authority."[2]

In enacting the Fund, the Commission acted in a manner consistent with its "broad legislative and judicial powers," including the power to establish the rules

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[2] Pub. Util. Code § 401(a) states:

The Legislature finds and declares that the public interest is best served by a commission that is appropriately funded and staffed, that can thoroughly examine the issues before it, and that can take timely and well-considered action on matters before it. The Legislature further finds and declares that funding the commission by means of a reasonable fee imposed upon each common carrier and business related thereto, each public utility that the commission regulates, and each applicant for, or holder of, a state franchise pursuant to Division 2.5 (commencing with Section 5800), helps to achieve those goals and is, therefore, in the public interest.

governing its proceedings. (*Wise v. Pacific Gas & Electric Co.* (1999) 77 Cal.App.4th 287, 300; *Consumers Lobby Against Monopolies v. Public Utilities Com.* (1979) 25 Cal.3d 891, 905 (*CLAM*) ["The Commission is a state agency of constitutional origin with far-reaching duties, functions and powers."]; *see* Cal. Const., Art. XII, §§ 2 [may establish its own procedures, "[s]ubject to statute and due process"]; Pub. Util. Code § 1701(a) [all "proceedings shall be governed by rules of practice and procedure adopted by the [C]ommission"].) This Commission also has expansive authority pursuant to Pub. Util. Code § 701 to "do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction."

The Commission's authority is not, however, unlimited. As it derives certain powers by statutory grant from the Legislature (*People v. Western Air Lines, Inc.* (1954) 42 Cal.2d 621, 624.), the Commission may not "disregard express legislative directions to it, or restrictions upon its power found in other provisions of the act or elsewhere in general law." (*PG&E Corp. v. Public Utilities Com.* (2004) 118 Cal. App.4th 1174, 1199.) In establishing the Fund, we could not authorize it to pay intervenor compensation claims beyond the proceedings involving electric, gas, water, and telephone utilities. Thus, the Fund cannot be used as a mechanism to compensate participants in formal proceedings like the instant OIR involving transportation utilities. We reached such a conclusion in D.08-11-061 wherein we stated: "We adopted the D.00-01-020 funding

mechanism as a component of the Intervenor Compensation Program, not as an alternative to it."[3]

5. The Legislative History Confirms the Intent that Intervenor Compensation is Unavailable in Formal Proceedings Involving Transportation Utilities

Even if we were to find that the language of the statutes was in any way unclear or subject to differing interpretations, the legislative history behind the creation of the Intervenor Compensation Program also supports the conclusion that formal proceedings involving transportation utilities are not eligible for intervenor compensation.

5.1. Events Leading up to and the Passage of Senate Bill 4

In *CLAM*, the California Supreme Court addressed the question of whether, and under what circumstances, the Commission could award attorney fees and costs to parties participating in Commission proceedings. The Court held that the Commission "had jurisdiction to award attorney fees and costs pursuant to the equitable 'common fund' doctrine in quasi-judicial reparation proceedings, but not in quasi-legislative rate-making proceedings."[4] Germane to our discussion was the Court's comment that despite the Commission's broad grant of authority under Pub. Util. Code § 701, "the decision to establish a system for compensating public interest organizations for participation in the Commission's quasi-legislative proceedings is a prerogative of the Legislature."[5]

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[3] D.08-11-061, at 9.

[4] 25 Cal.3d, at 897.

[5] *Id.*, at 912, fn. 10.

In response to *CLAM*, the Commission issued an *Order establishing the terms and conditions under which participants in commission proceedings may request reimbursement for attorney and witness fees; the rules apply to all but proceedings under the Public Utility Regulatory Policies Act [PURPA] of 1978* (1983) Decision (D.) 83-04-017, 11 CPUC2d 177. The *Order* followed Decision (D.) 93724 in Application (A.) 59308 and Order Instituting Investigation 100 under Article 3.5 of the Rules of Practice and Procedures as a rulemaking proceeding. The Commission explained the need to clarify the types of proceedings where intervenor compensation could be awarded:

> The *CLAM* decision dealt only with two types of Commission proceedings, quasi-judicial reparations proceedings, and quasi-legislative ratemaking proceedings. It did not address the myriad other proceedings which come before this Commission which largely fall into the quasi-legislative category but which are not directly involved with ratemaking. The *CLAM* decision does not address the authority to award attorney fees in these proceedings.

The Commission then adopted its rules which became part of the Cal. Admin. Code, tit. 20, § 76.21 *et seq*. Rule 76.21 states that the "purpose of this article is to establish procedures for awarding reasonable fees and costs to participants in proceedings before this Commission." Rule 76.22 (h) defined "proceeding" as "any application, case, investigation, rulemaking, or other formal matter before the Commission." Outside of excluding matters governed by PURPA, the definition of "proceeding" was fairly expansive.

After utilities initiated court challenges to the Commission's authority to award intervenor compensation,[6] the Legislature stepped in and on July 5, 1984, the Governor signed Senate Bill 4 (SB 4) which added §§ 1801 through 1808 to the Pub. Util. Code. (Statutes of 1984, Ch. 297.) In doing so, the Legislature intended:

> To confirm the authority of the Public Utilities Commission in proceedings commenced on or prior to December 31, 1984, to make awards to participants pursuant to existing rules and regulations of the commission and to require that for proceedings commenced on and after January 1, 1985, awards to customers shall be made pursuant to this act.[7]

While the above-quoted verbiage used the word "proceedings" without further definition, thus suggesting opened-ended authority on the Commission's part, Pub. Util. Code § 1801 placed restrictions of the types of proceedings where intervenor compensation could be awarded:

> The purpose of this article is to provide compensation for reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs to public utility customers of participation or intervention in any hearing or proceeding of the commission for the purpose of modify a rate or establishing a fact or rule that may influence a rate.

By its use of the phrase "any hearing or proceeding of the commission for the purpose of modifying a rate or establishing a fact or rule that may influence a rate," the statute limited intervenor compensation claims to ratemaking proceedings only, rather than to all proceedings as previously contemplated by Rule 76.22(h), a distinction that the California Supreme Court acknowledged in

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[6] *See* discussion in *Southern California Edison Company v, Public Utilities Commission*, (2004) 117 Cal.App.4th 1039, 1048, fn. 6.

[7] Ch. 297, SECTION 1, at 1526.

Southern California Gas Company v. Public Utilities Commission (1985) 38 Cal.3d 64, 66, fn. 1:

> There are a number of differences between the "existing rules and regulations" and new Public Utilities Code Sections 1801-1808. The most important is that the current rules permit awards in virtually all regulatory (as Opposed to adjudicatory) proceedings, while the new statutes authorize them only with respect to rate issues.

5.2. The Passage of Assembly Bill 1975

On January 1, 1993, the Legislature made additional changes to the intervenor compensation program with the passage of Assembly Bill (AB) 1975 (Stats. 1992, Ch. 942), and the Commission revised its rules to conform to the Legislature's changes. (*Interim Opinion Issuing Proposed Rules to Govern Compensation of Intervenors in Commission Proceedings* (1993) Decision (D.) 93-03-023.) In particular, Pub. Util. Code § 1801 "was amended to remove the limiting phrase, 'for the purpose of modifying a rate or establishing a fact or rule that may influence a rate,' that previously had followed the phrase 'proceeding of the [C]ommission." ((2008) Decision (D.) 08-11-061, at 5, citing to Historical and Statutory Notes, 57A West's Ann. Pub. Util. Code (1994 ed.) foll. § 1801, at 164.) Thus, the new version of Pub. Util. Code § 1801 reads as follows:

> The purpose of this article is to provide compensation for reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs to public utility customers of participation or intervention in any proceeding of the commission.

The Legislature also added Pub. Util. Code § 1801.3 (a) which states:

> It is the intent of the Legislature that: (a) the provisions of this article shall apply to all formal proceedings of the commission involving electric, gas, water, and telephone utilities.

It is apparent that when Pub. Util. Code §§ 1801 and 1801.3(a) are read together, they demonstrate that the Legislature did not intend to add transportation proceedings to the list of formal proceedings that would qualify for an intervenor compensation request. The Senate Committee on Energy and Public Utilities made this point clear in its analysis of the 1993 changes to the intervenor compensation program:

> While AB 1975 seeks to bring more parties into the PUC intervenor process, it would not extend the authority of the PUC to allow for financial assistance to intervenors who might like to participate in transportation proceedings, or groups representing large commercial interests.[8]

Thus, despite a transportation company's status as a regulated utility (*see* Pub. Util. Code §§ 211, 216), as well as our decision in this Rulemaking that TNCs are charter-party carriers subject to the Commission's regulatory jurisdiction, neither transportation companies, nor formal proceedings involving transportation companies, can be the subject of intervenor compensation requests as they are not listed in Pub. Util. Code § 1801.3(a).

What the foregoing survey of the law's evolution demonstrates is that obtaining authorization from the Legislature is necessary to insure the legality and viability of the intervenor compensation program, notwithstanding the Commission's broad powers granted by Pub. Util. Code § 701. In *CLAM* 25 Cal.3d 891, 912, footnote 10, the California Supreme Court reasoned that despite the expansive authority, "the decision to establish a system for compensating public interest organizations for participation in the Commission's

[8] Committee Report for 1991 California Assembly Bill 1975, 1991-1992 Regular Session, at 4.

quasi-legislative proceedings is a prerogative of the Legislature." (25 Cal.3d, at 912, footnote 10.) Similarly, and outside the context of an intervenor compensation request but nonetheless instructive, the California Supreme Court reasoned in *Assembly v. Public Utilities Commission* (1995) 12 Cal.4th 87, 103, that Pub. Util. Code § 701's breadth would not allow the Commission to act in a way contrary to an expressed Legislative directive:

> Past decisions of this court have rejected a construction of section 701 that would confer upon the Commission powers contrary to other legislative directives, or to express restrictions placed upon the Commission's authority by the Public Utilities Code. (*See, e.g. Pacific Tel. & Tel. Co. v. Public Util. Com.* (1965) 62 Cal.2d 634, 653 [144 Cal.Rptr. 1, 401 P.2d 353] ["Whatever may be the scope of regulatory power under this section, it does not authorize disregard by the commission of express legislative directions to it, or restrictions upon its power found in other provisions of the act or elsewhere in general law."].)

As such, the Commission's authority to award intervenor compensation is dependent on the Legislature's prerogative.

6. Equitable Principles are Insufficient to Provide a Legal Basis to Award Intervenor Compensation in this Proceeding

6.1. Equitable Estoppel

The Commission is not equitably estopped from adhering to Pub. Util. Code § 1801.3(a) because the OIR invited those seeking intervenor compensation to comply with the Provisions of the Pub. Util. Code. To understand this conclusion, it is necessary to set forth the requirements of an equitable estoppel claim: (1) the party to be estopped must be appraised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel has a right to believe it was so intended; (3) the other party

must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury. (*Greene v. State Farm Fire & Casualty Co*. (1990) 224 Cal. App.3d 1583, 1590.)

It is not possible for any of the parties to this proceeding to utilize equitable estoppel as a means to obtain intervenor compensation for to do so would require this Commission to interpret and apply Pub. Util. Code § 1801.3(a) in a manner that is inconsistent with its plain meaning. In *Joseph George Distributor v. Department of Alcoholic Beverage Control* (1957) 149 Cal. App.2d 702, 713, the Court stated that "the government may not be estopped so as to 'frustrate the purpose of its laws or thwart its public policy,'" (quoting from *County of San Diego v. California Water & Telephone Company* (1947) 30 Cal.2d 817, 826.)

Moreover, when an administrative interpretation appears to be in error, we are duty bound to correct the error. In *Pacific Motor Transport Company v. State Board of Equalization* (1972) 28 Cal. App.3d 230, 242, the Court states "When a regulation or other statutory interpretation of an administrative agency appears to be erroneous, it becomes the agency's duty to conform to the correct interpretation." Thus, the OIR's implied suggestion that intervenor compensation could be recovered in a quasi-legislative transportation proceeding was erroneous and the Commission, *sua sponte*, strikes Paragraph No. 7 from the OIR.

Finally, the parties seeking intervenor compensation are represented by counsel[9] and the applicable statutory provisions are published in the Public

[9] Andy Katz is counsel for TransForm. Melissa W. Krasnitz is counsel for CforAT. TURN is represented by Christine Mailoux.

Utilities Code. In such situations, the Court in *California Cigarette Concessions, Inc. v. City of Los Angeles* (1960) 53 Cal.2d 865, 871 found that equitable estoppel would be inapplicable:

> [Where] one acts with full knowledge of plain provisions of law, and their probably effect upon facts within his knowledge, especially where represented by counsel, he can neither claim (1) ignorance of the true facts or (2) reliance to his detriment upon conduct of the person claimed to be estopped, two of the essential elements of equitable estoppel.

As such, equitable estoppel may not be used as a means to obtain intervenor compensation in this quasi-legislative transportation proceeding.

6.2. Promissory Estoppel

In order to prevail on a claim of promissory estoppel, the claimant must show: (1) a promise clear and unambiguous in its terms; (2) reliance by the party to whom the promise is made; (3) his reliance must be both reasonable and foreseeable; and (4) the party asserting the estoppel must be injured by his reliance. (*Ernest Laks v. Coast Federal Savings and Loan* (1976) 60 Cal. App.3d 885, 890.)

Claimants cannot satisfy the above criteria as there was no promise from the Commission that any of them would receive intervenor compensation for participating in the proceeding. At best, the OIR instructed any party wishing to claim intervenor compensation to comply with our procedural requirements. In no way can such a statement be a promise to award intervenor compensation that is clear and unambiguous in its terms.

Furthermore, the Commission could not make a promise that is contrary to the clear parameters of the Intervenor Compensation Program. As we have explained above, a transportation proceeding is not one of the proceedings eligible for intervenor compensation under Pub. Util. Code § 1801.3(a), nor is

there a Fund from which the Commission might order intervenor compensation payments.

7. Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 14.6(c)(6) of the Commission's Rules of Practice and Procedure, we waive the otherwise applicable 30-day public review and comment period for this decision.

Findings of Fact.

1. On December 20, 2012, this Commission opened Rulemaking (R.) 12-12-011.
2. R.12-12-011 is a quasi-legislative proceeding involving transportation utilities.
3. On March 29, 2013, TURN filed its NOI.
4. On March 18, 2013, CforAT filed a NOI.
5. After the Commission issued D.13-09-045, CforAT filed an Intervenor Compensation Claim on October 2, 2013, requesting $67,445.65 for the claimed substantial contribution it made to the OIR's outcome in Phase I.
6. On March 18, 2013, TransForm filed a NOI.
7. On October 22, 2013, TransForm filed an Amended NOI.
8. On April 15, 2013, SideCar Technologies, Inc., SideCar, Zimride, Inc., and Tickengo, Inc. filed a joint response to TURN's NOI, which they opposed on the ground that this is a transportation proceeding and, therefore, is not eligible for intervenor compensation under Pub. Util. Code § 1801.3(a).
9. On November 1, 2013, SideCar filed its response to CforAT's Request for Award of Intervenor Compensation, and relied on the reasons in the joint response in opposing CforAT's Request.

10. On November 1, 2013, Uber filed a response to CforAT's Request and to TransForm's Amended NOI. Uber also relied on Pub. Util. Code § 1801.3 for its argument that intervenor compensation may only be awarded in proceedings involving electric, gas, water, and telephone utilities.

Conclusions of Law

1. Pursuant to Pub. Util. Code § 1801.3(a), intervenor compensation may only be recovered from formal proceedings of the Commission involving electric, gas, water, and telephone utilities.

2. R.12-12-011 is not a formal proceeding of the Commission involving electric, gas, water, or telephone utilities.

3. R.12-12-011 is a formal proceeding of the Commission involving transportation utilities.

4. As transportation utilities do not contribute monies to the Intervenor Compensation Program Fund, there are no monies therein from which to award intervenor compensation to claimants.

5. The principle of equitable estoppel cannot not be used as a basis to award intervenor compensation because to do so would be contrary to Pub. Util. Code § 1801.3(a).

6. The principle of promissory estoppel cannot not be used as a basis to award intervenor compensation because to do so would be contrary to Pub. Util. Code § 1801.3(a).

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network's Notice of Intent to Claim Intervenor Compensation is denied.
2. TransForm, Inc.'s Notice of Intent to Claim Intervenor Compensation is denied.
3. TransForm, Inc.'s Amended Notice of Intent to Claim Intervenor Compensation is denied.
4. Center for Accessible Technology's Notice of Intent to Claim Intervenor Compensation is denied.
5. Center for Accessible Technology's Intervenor Compensation claim is denied.
6. The Commission, *sua sponte*, strikes Paragraph No. 7 from Rulemaking 12-12-011.
7. Rulemaking 12-12-011 remains open.

This order is effective today.

Dated _____, at San Francisco, California.